Syllabus.

ARIZONA *v.* CALIFORNIA ET AL.

No. 19, original. Argued March 9, 10, 1931.—Decided May 18, 1931.

1. The United States has power to construct a dam across a navigable river for the purpose of improving navigation, and need not first obtain approval of its plans by the State in which the dam is to be located, even though this be expressly required of it by a statute of the State. P. 451.
2. On a motion to dismiss, equivalent to a demurrer, an allegation in the bill that a river is not and never has been navigable is not taken as an admitted fact if the court judicially knows the contrary. P. 452.
3. Judicial notice taken (from the evidence of history) that a large part of the Colorado River south of Black Canyon in Arizona was formerly navigable, and that the main obstacles to navigation have been the accumulations of silt coming from the upper reaches of the river system, and the irregularity in the flow due to periods of low water; and (from reports of Committees of Congress recommending the project here in question) that, in the opinion of the government engineers, the silt will be arrested by the dam, and, through use of the stored water, irregularity in the flow below Black Canyon can be largely overcome, and navigation for considerable distances both above and below the dam will become feasible. P. 453.
4. Commercial disuse of a navigable river, resulting from changed geographical conditions and a Congressional failure to deal with them, does not amount to an abandonment of it as a navigable river or prohibit future exertion of federal control over it. P. 454.
5. The Boulder Canyon Project Act, December 21, 1928, authorizes the Secretary of the Interior, at the expense of the United States, to construct at Black Canyon on the Colorado River, a dam, a storage reservoir, and a hydroelectric plant; provides for their control, management, and operation by the United States; and declares that the authority is conferred "subject to the terms of the Colorado River Compact," "for the purpose of controlling the floods, improving navigation and regulating the flow of the Colorado River, providing for storage and for the delivery of the stored waters thereof for reclamation of public lands and other beneficial uses exclusively within the United States, and for the generation of electrical energy as a means of making the project herein authorized a self-supporting and financially solvent undertaking." The compact referred to is an agreement for the apportionment of the water of the river and its tributaries, entered into by all the States

in which they flow, except Arizona. The compact declares that "inasmuch as the Colorado River has ceased to be navigable for commerce and the reservation of its waters for navigation would seriously limit the development of its basin, the use of its waters for purposes of navigation shall be subservient to the uses of such waters for domestic, agricultural, and power purposes." The compact is approved by the Act. This was a suit by Arizona, against the Secretary of the Interior and the States which made the compact, to enjoin operations under the Act as invasions of Arizona's interests in the river and as threatening existing and future use of the water within her limits, principally for irrigation. *Held:*

(1) The Court cannot inquire into the motives of the members of Congress in passing the Act. P. 455.

(2) As the river is navigable and the means which the Act provides are not unrelated to the control of navigation, the erection and maintenance of the dam and reservoir are clearly within the powers conferred upon Congress. Whether the particular structures proposed are reasonably necessary, is not for the Court to determine. *Id.*

(3) The fact that purposes other than navigation will also be served could not invalidate the exercise of the authority conferred by the Act, even if those other purposes, standing alone, would not have justified an exercise of Congressional power. *Id.*

(4) Although the authority conferred by the Act is therein stated to be "subject to the Colorado River Compact," which instrument would make the improvement of navigation subservient to all other purposes, yet the specific statement of primary purpose in the Act governs the general references to the compact; and the Court may not assume that Congress had no purpose to aid navigation, and that its real intention was that the stored water shall be so used as to defeat the declared primary purpose. P. 456.

(5) Possibility that the power to regulate navigation may be abused is not an argument against its existence. 457.

(6) There is no occasion to decide whether the authority to construct the dam and reservoir might not also have been constitutionally conferred for the specified purpose of irrigating public lands of the United States, or for the specified purpose of regulating the flow and preventing floods in this interstate river; or as a means of conserving and apportioning its waters among the States equitably entitled thereto, or for the purpose of performing international obligations. P. 457.

6. In support of the prayer for injunction, Arizona alleges that the mere existence of the Act will invade her quasi-sovereign rights in respect of the appropriation of waters within or on her borders; that the State has great need of further appropriations from the river for irrigation; that vested rights of appropriation under her laws can be acquired only by diverting the water and applying it to beneficial use; that, owing to topographical conditions, this can only be accomplished through large and costly projects, involving large-scale financing that will be impossible unless it clearly appear, at or before the time of constructing the requisite works, that vested rights to permanent use of the water will be acquired; that actual projects have been planned and approved under the State's laws which look to appropriation of a large part of the unappropriated water of the river, and which would irrigate an immense area in the State, including a large area of state land; that the needed appropriations will be prevented because, under the Act, it is proposed to store the entire unappropriated flow at the dam, and Arizona, and those claiming under her, will not be permitted to take water from the reservoir, except upon agreeing that the use shall be subject to the compact, by the terms of which they will not be entitled to appropriate any water in excess of that to which there are now perfected rights in Arizona; and that the Act prevents Arizona, and those claiming under her, from acquiring necessary rights of way over lands of the United States for the irrigation of Arizona land, by subjecting such rights to the compact. *Held* that there is no ground for an injunction, because:

(1) The contention is based not upon any actual or threatened impairment of Arizona's rights but upon assumed potential invasions. P. 462.

(2) The Act does not purport to affect any legal right of the State or limit, in any way, the exercise of her legal right to appropriate water. *Id.*

(3) Section 18 of the Act declares that nothing in it "shall be construed as interfering with such rights as the States now have either to the waters within their borders or to adopt such policies and enact such laws as they may deem necessary with respect to the appropriation, control, and use of water within their borders, except as modified" by interstate agreement. As Arizona has made no such agreement, the Act leaves her legal rights unimpaired. *Id.*

(4) There is no allegation of definite physical acts of present or future interference with the exercise of Arizona's right to appropri-

ate water by diversions above the dam, or with enjoyment of water so appropriated; nor any specific allegation of physical acts impeding exercise of her right to make future appropriations by diversions below the dam, or limiting enjoyment of rights so acquired, unless it be by preventing an adequate flow in the river at any necessary point of diversion. P. 462.

(5) If by operations at the dam, when completed, any then perfected right of Arizona, or of those claiming under her, should hereafter be interfered with, appropriate remedies will be available. P. 463.

(6) There is no threatened physical interference with irrigation projects approved under the Arizona law, and the Act interposes no legal inhibition on their execution. *Id.*

(7) There is no occasion for determining now Arizona's rights to interstate or local waters which have not yet been, and which may never be, appropriated. P. 464.

(8) This Court cannot issue declaratory decrees. *Id.*

(9) Arizona has no constitutional right to use, in aid of appropriation, any land of the United States, and cannot complain of the provision conditioning the use of such public land. *Id.*

(10) The bill should be dismissed without prejudice to an application for relief in case the stored water is used in such a way as to interfere with the enjoyment by Arizona, or those claiming under her, of any rights already perfected or with the right of Arizona to make additional legal appropriations and to enjoy the same. *Id.*

HEARING upon motions to dismiss a bill for an injunction, which was filed in this Court by the State of Arizona. The parties defendant were Ray Lyman Wilbur, Secretary of the Interior, and the States of California, Nevada, Utah, New Mexico, Colorado, and Wyoming.

Solicitor General Thacher, with whom *Mr. Robert P. Reeder* was on the brief, for Wilbur, Secretary of the Interior.

The United States is an indispensable party. *Morrison* v. *Work,* 266 U. S. 481, 485; *Kansas* v. *Colorado,* 185 U. S. 125; *Minnesota* v. *Hitchcock,* 185 U. S. 373, 387; *Oregon* v. *Hitchcock,* 202 U. S. 60, 68, 69; *Louisiana* v.

Garfield, 211 U. S. 70, 78; *Louisiana* v. *McAdoo,* 234 U. S. 627; *New Mexico* v. *Lane,* 243 U. S. 52; *Wells* v. *Roper,* 246 U. S. 335; *North Dakota* v. *Chicago & N. W. Ry. Co.,* 257 U. S. 485; *Texas* v. *Interstate Commerce Comm.,* 258 U. S. 158, 164; *Lambert Run Coal Co.* v. *Baltimore & O. R. Co.,* 258 U. S. 377, 382. See also *Goldberg* v. *Daniels,* 231 U. S. 218, 221; *International Postal Supply Co.* v. *Bruce,* 194 U. S. 601. The United States may not be sued even by a State without its consent. *Kansas* v. *United States,* 204 U. S. 331, 342.

No vested rights of the complainant or of any of her citizens will be invaded by the execution of the Act. By their own terms, both the Act and the compact are subordinated to all such rights; nor is there any interference, actual or threatened, with the right of Arizona, or her inhabitants, to make appropriation from the unappropriated waters of the Colorado River.

On the contrary, California has agreed to limit the total appropriations to 4,900,000 acre-feet, leaving 3,600,000 to satisfy present diversions from the main stream in Arizona not exceeding 600,000 acre-feet. The balance of 3,000,000 acre-feet in the main stream thus will remain to satisfy present and future uses in Nevada and future appropriations in Arizona. If Arizona's contentions are correct, the entire unappropriated flow of the stream is now and will continue until appropriation by others to be subject to appropriation by her citizens without regard to the terms of the compact to which she is not a party. Until the dam has been built and the right of the State of Arizona or her citizens to make appropriations adequate to her existing needs has been invaded, or is presently threatened, there can be no basis for relief.

The Act and the compact expressly recognize all existing rights to take water from the Colorado River and its tributaries.

Where the thread of the river constitutes the boundary between two States, neither State may reserve to itself all the water from the stream for future appropriation.

The fact that a neighbor State proposes to divert to another watershed a portion of the water to which it is entitled is not material. Such diversions have been recognized as valid by this Court (*Wyoming* v. *Colorado,* 259 U. S. 419, 466; and see *Missouri* v. *Illinois,* 200 U. S. 496, 526), and they are so recognized by the six States parties to the Colorado River Compact.

So far as the United States proposes to divert water not theretofore appropriated, and to use it for the reclamation and irrigation of public lands, it cannot be restrained by Arizona within whose borders those lands are situated and under whose Organic Act such rights were expressly reserved. *United States* v. *Rio Grande Dam Co.,* 174 U. S. 690, 703; Enabling Act, c. 310, §§ 20, 28, 36 Stat. 557, 570, 575. The United States may make use of its property for such purposes regardless of the wishes of the State. *Winters* v. *United States,* 207 U. S. 564, 577. See also *Stearns* v. *Minnesota,* 179 U. S. 223, 245; *Utah Power & L. Co.* v. *United States,* 243 U. S. 389, 403, 404; *United States* v. *Holt State Bank,* 270 U. S. 49, 54, 55; *Hunt* v. *United States,* 278 U. S. 96, 100.

And so far as Congress orders the erection of structures in a stream for the facilitation of interstate navigation or for flood control of such a stream, it is empowered to do so by the Constitution. *Gibson* v. *United States,* 166 U. S. 269; *United States* v. *Chandler-Dunbar Co.,* 229 U. S. 53; *Greenleaf Lumber Co.* v. *Garrison,* 237 U. S. 251; *Cubbins* v. *Mississippi River Comm.,* 241 U. S. 351, 369. See also *Sanitary District* v. *United States,* 266 U. S. 405, 426.

Where the land to be protected by flood control is the property of the United States, Congress undoubtedly has power to regulate the flow of the stream.

It follows that the complaint, which merely alleges that the United States and other States in the Colorado River Basin are proposing to appropriate the unappropriated waters of the Colorado River Basin to beneficial uses, cannot be sustained when no actual or presently threatened invasion of any existing or vested right is alleged. Upon the allegations of the bill it is apparent that this suit begins where the suit brought by Kansas against Colorado ended—that is, with failure to show any injury, actual or threatened, which can justify the intervention of a court of equity. *Kansas* v. *Colorado,* 206 U. S. 46, 117.

This Court has said repeatedly that it will not consider merely abstract questions. *New York* v. *Illinois,* 274 U. S. 488, 489, 490; *New Jersey* v. *Sargent,* 269 U. S. 328.

Congress has power under the commerce clause to order the construction of the dam at Black Canyon.

The navigability of the Colorado between Laguna Dam and Callville has been repeatedly recognized by Congress and by territorial and state legislatures. Until this bill was filed its navigability, so far as we have been able to ascertain, has never been questioned. The authorities in Arizona prior to the commencement of this litigation have consistently asserted its navigability. And so we submit that its navigability below the proposed dam is a matter so notorious as not to require proof, and to be clearly within the knowledge of the Court.

The aid to be given by the dam in improving navigability is obvious. The reservoir will hold back water during time of flood and will allow an increased minimum flow at other seasons of the year. The silt which is flowing along with the water at the present time will be retained in the reservoir, and the desilted water, flowing with regularity in the channel of the lower river, will steadily improve the condition of that channel.

This Court may take judicial notice of the navigability of the stream. *The Montello,* 11 Wall. 411, 414; *Muller* v. *Oregon,* 208 U. S. 412, 421; *The Planter,* 7 Pet. 324, 342; *Brown* v. *Piper,* 91 U. S. 37, 42; *Brown* v. *Spilman,* 155 U. S. 665, 670; *United States* v. *Thornton,* 160 U. S. 654, 658, 659; *Louisville Trust Co.* v. *Louisville, N. A. & C. Ry. Co.,* 174 U. S. 674, 683; *United States* v. *Rio Grande Dam Co.,* 174 U. S. 690, 696–698; *Cubbins* v. *Mississippi River Comm.,* 241 U. S. 351, 367; *Carroll* v. *United States,* 267 U. S. 132, 159, 160.

When facts are averred which run counter to facts of which the Court takes judicial notice, the averments are disregarded. *Jones* v. *United States,* 137 U. S. 202, 215; *Pearcy* v. *Stranahan,* 205 U. S. 257, 263; *Middlesex Transp. Co.* v. *Pennsylvania R. Co.,* 82 N. J. Eq. 550, 553; *Heiskell* v. *Knox County,* 132 Tenn. 180, 186; see also *McSween* v. *Live Stock Board,* 97 Fla. 750, 774.

Even though there is but little if any transportation on the river at the present time, Congress has not lost its power to improve the stream. *Economy Light & Power Co.* v. *United States,* 256 U. S. 113, 124.

In the face of its mandatory declaration of purpose, to say that purposes other than the improvement of navigation are to be served by the construction of the dam and reservoir will not suffice to defeat the Act as one beyond the power of Congress. Congress might properly give weight to the fact that by the same measures it would secure additional desirable results without thereby infringing upon any rights of the complainant.

It is true that in the compact the States, which were considering the river as a whole, said that it had ceased to be navigable and that the use of its waters for purposes of navigation should be subservient to other uses; but the power of Congress to deal with it as a navigable stream was clearly recognized so far as the river below the dam is concerned. Congress has declared that its navigability

is to be improved and its floods controlled by the construction of the dam. Other uses of the water may be made to the extent which Congress has authorized in the Act; but such uses are not inconsistent with the intent of Congress to improve navigability, for Congress doubtless knew that while provision is made for appropriations of water into the distant future, there will always be a substantial flow of water in the lower reaches of the river if only to satisfy the rights of appropriators in southern Arizona, in the Imperial Valley of California, and, if any, in Mexico. And Congress knew, of course, that the use of the water for the generation of electrical energy would not reduce the flow of the stream.

Regardless of the power of Congress under the commerce clause, the Act is constitutional. The United States is the owner of nearly six hundred square miles of irrigable public lands and Indian reservations along and near the shores of the Colorado River in Arizona and in California. As such owner, it is entitled to impound water, to regulate its flow, and to consume a portion of it. *United States* v. *Rio Grande Co.*, 174 U. S. 690, 703.

The State of California, whose jurisdiction extends to the middle of the Colorado River, is entitled to receive water from that stream. It is submitted that the Government may properly release to the State as much water as the State is entitled to appropriate.

The flow of water is to be regulated and the water desilted, not only to improve navigation but in order to save the Yuma, Palo Verde, and Imperial Valleys from destruction.

Even where Congress has no power to enact regulatory legislation as to a subject matter, it may make appropriations for the public welfare. It has done so ever since the earliest years of the country's history. Cf. *Massachusetts* v. *Mellon*, 262 U. S. 447. Even if the dam were to be erected solely in order to save the Imperial Valley from

destruction, the Boulder Canyon Project Act would be constitutional.

Mr. U. S. Webb, Attorney General of California, with whom *Messrs. W. B. Mathews* and *Charles L. Childers* were on the brief, for California.

Congress is presumed to have acted with full knowledge of the subject matter and in good faith. Its conclusion is not to be questioned. *United States* v. *Des Moines Nav. & R. Co.,* 142 U. S. 510, 544; *Chesapeake & Pot. Tel. Co.* v. *Manning,* 186 U. S. 238, 245; *Wisconsin* v. *Duluth,* 96 U. S. 379.

The means which Congress may adopt to a constitutional end is final.

Congress has absolute power to determine what is or is not an obstruction of or an improvement to navigation.

The Colorado River is so notoriously navigable that the Court will take judicial notice of that fact; but even if it be not navigable at all, still the Act will not fail. Congress has declared its intention to improve the navigability of this stream. The commerce clause of the Constitution says nothing about the improvement of the navigability of navigable streams. It refers to the regulation of commerce. Under this clause, Congress has been sustained in the authorization of the construction of a canal, *Wisconsin* v. *Duluth,* 96 U. S. 379; in the building of a railroad, *Wilson* v. *Shaw,* 204 U. S. 24. If this stream is not now navigable, Congress has authority to make it so. If private property is to be taken or injured, ample authority is given in the Act itself for the exercise of eminent domain.

The State has a right, in her quasi-sovereign capacity, to sue or defend for the protection of her people, but she must first show that her people or their property are in immediate need of such protection. Until that is

shown, no case or controversy of which the Court will take judicial cognizance is presented.

Arizona does not claim to own the running water, nor could she do so. Only such water as is taken into possession and control is subject to ownership. Control of these waters is an exercise of the police power, which is another term for the power of government. *Mutual Loan Co.* v. *Martell,* 222 U. S. 225. It is an exercise of political power.

The right of the United States to exercise control over the Colorado River for improvement of navigation or otherwise is also the exercise of political power, *United States* v. *Chandler-Dunbar Co.,* 229 U. S. 53; *Louis Oyster Co.* v. *Briggs,* 229 U. S. 82, 88. It is thus a conflict between the political power of the State and the political power of the Nation.

The Arizona Enabling Act and Constitution reserved to the Nation a selection of lands along the river by the Government for power purposes, which was made, and includes the lands at Black Canyon. They also reserved to the United States all rights and powers for carrying out the Reclamation Act "to the same extent as if this State had remained a territory."

Arizona tells the Court she has repealed this section of her Constitution. Such attempted repeal, however, is wholly ineffective. *Stearns* v. *Minnesota,* 179 U. S. 223, 244.

The bill does not allege the non-existence of a flood menace on the lower river and below Black Canyon. The United States is the owner of nearly 600 square miles of irrigable public lands adjacent to the lower river, and below Black Canyon.

It has inherent power to protect its own property. The United States is the owner of the Laguna Dam; it has constructed the Yuma Reclamation Project at a cost of many millions of dollars; it has constructed and is

maintaining extensive levee protective works along the lower river. These works may all be destroyed by flood. Storage and regulation of the flow of the river is the only means of permanent protection of these properties from floods. In the particular case the United States clearly has the right to construct flood control works under the commerce clause.

The United States has the absolute power and control of the public lands, as a proprietor and as a sovereign.

Mr. Thomas H. Gibson, with whom *Messrs. John S. Underwood,* Attorney General of Colorado, *E. K. Neumann,* Attorney General of New Mexico, *Gray Mashburn,* Attorney General of Nevada, *Clarence L. Ireland, Delph E. Carpenter, L. Ward Bannister,* and *Francis C. Wilson* were on the brief, for Colorado, New Mexico, and Nevada; and *Messrs. George P. Parker,* Attorney General of Utah, and *James A. Greenwood,* Attorney General of Wyoming, with whom *Messrs. William W. Ray* and *William O. Wilson* were on the brief, for Utah and Wyoming.

The rights against the alleged invasion of which the injunction is prayed, are purely political, upon the existence of, and alleged injury to, which the complainant attempts to raise a purely political issue. Of such an issue this Court cannot take judicial cognizance.

Aside from these political rights, no private, civil, personal or property right of the State of Arizona or of anyone else is set forth or sought to be protected from injury.

No issuable fact, either in respect of the navigability of the Colorado River or the reclamation of public lands, is raised by the bill.

The allegations in respect of the navigability of the stream and the reclamation of public lands were made for the sole purpose, and with the specific intent, of laying a foundation for questioning the motives and purposes of Congress in enacting the Act. The actual facts,

of which this Court can take judicial notice, are that the stream is navigable in fact and in law. *Jones* v. *United States,* 137 U. S. 202.

The Court is bound by the conclusive presumption that any facts essential to the validity of the Act did, in fact, exist at the time of its enactment and that if any special finding of those facts was required to warrant the passage of the Act, for the purposes of this case, the fact that Congress enacted it and in so doing declared its purpose to be the improvement of navigation, is the equivalent of such a finding. *United States* v. *Des Moines,* 142 U. S. 544, 545; *Atchison, T. & S. F. R. Co.* v. *Matthews,* 174 U. S. 104; 6 R. C. L. 112, 113, 114.

The complaint is so fatally defective as to require dismissal with prejudice.

The Act is constitutional. The sections impressing upon the management of the Boulder Canyon Project and its water-users the interbasinal division of water made by the compact, and regulating the use of the public lands of the two Basins, are valid as an exercise of the power of Congress to regulate the use and to dispose of the property of the United States. Constitution, Art. IV, § 3; *Irvine* v. *Marshall,* 20 How. 558, 561–562; *Gibson* v. *Choteau,* 13 Wall. 92, 99; *Camfield* v. *United States,* 167 U. S. 518–524, 525–6; *Stearns* v. *Minnesota,* 179 U. S. 223; *Butte City Water Co.* v. *Baker,* 196 U. S. 119, 126; *Kansas* v. *Colorado,* 206 U. S. 46, 92; *Light* v. *United States,* 220 U. S. 523, 536–7; *United States* v. *Midwest Oil Co.,* 236 U. S. 459, 475; *Utah Power & L. Co.* v. *United States,* 243 U. S. 389, 403–5; *Oregon & Cal. R. Co.* v. *United States,* 243 U. S. 549, 553; *McKelvey* v. *United States,* 260 U. S. 353, 358–9; *United States* v. *Alford,* 274 U. S. 264, 267; *Sinclair* v. *United States,* 279 U. S. 263, 297; *United States* v. *Hanson,* 167 Fed. 881, 883-4.

Arizona is not a party to the Colorado River Compact and is not in a position to question its constitutionality.

The compact is valid and constitutional. It is necessary to prevent litigation, strife and turmoil throughout the entire Colorado River Basin and for protection of the future development and general welfare of the six approving States. It assures harmonious coöperation between federal and state governments.

The States have power to enter into compacts or agreements with other States or with the United States. *Poole* v. *Fleeger,* 11 Pet. 185, 209–210; *id.* (Baldwin, J.) Appendix to 11 Pet. pp. 170a, 174–176; *Rhode Island* v. *Massachusetts,* 12 Pet. 657, 725–731; *Stearns* v. *Minnesota,* 179 U. S. 223, 245; *Virginia* v. *Tennessee,* 148 U. S. 503; *Holmes* v. *Jennison,* 14 Pet. 540, 570; *Washington* v. *Oregon,* 214 U. S. 205, 218; *United States* v. *Texas,* 143 U. S. 621, 646; s.c. 162 U. S. 1.

Consent of Congress having been obtained, the States are, "in this respect restored to their original inherent sovereignty; such consent being the sole limitation imposed by the Constitution, when given, left the States as they were before . . . whereby their compacts became of binding force . . . operating with the same effect as a treaty between sovereign powers," and "became conclusive upon all the subjects and citizens thereof, and bind their rights." *Rhode Island* v. *Massachusetts,* 12 Pet. 657, 725. See *Poole* v. *Fleeger,* 11 Pet. 185, 209–210.

Consent of Congress may be obtained either before or after conclusion of the compact and may be express or implied. *Wharton* v. *Wise,* 153 U. S. 155, 158, 159; *Virginia* v. *Tennessee,* 148 U. S. 503, 521, 525; *Virginia* v. *West Virginia,* 11 Wall. 39; *Pennsylvania* v. *Wheeling Co.,* 13 How. 518; *Rhode Island* v. *Massachusetts,* 12 Pet. 657, 725; *Poole* v. *Fleeger,* 11 Pet. 185, 209–210; *id.* (Baldwin, J.) Appendix to 11 Pet. pp. 170a, 174–176; *Green* v. *Biddle,* 8 Wheat. 1, 86.

No form of compact is required. A compact may be in form of a writing subscribed by the agreeing States, or in form of concurrent legislation or by any other method. The present compact, consisting of an approved written document and concurring Acts of the Legislatures of the six approving States and of Congress, constitutes a valid compact even though the language used in the several Acts may vary. *Olin* v. *Kitzmiller*, 259 U. S. 260; *Wharton* v. *Wise*, 153 U. S. 155, 168; *Virginia* v. *Tennessee*, 148 U. S. 503, 517; *Washington* v. *Oregon*, 214 U. S. 205, 218; *Rhode Island* v. *Massachusetts*, 12 Pet. 657, 725–731; *Holmes* v. *Jennison*, 14 Pet. 540, 570.

The compact involves subject matter within the jurisdiction of the contracting States, and a valid and constitutional exercise of their sovereignty. *Wyoming* v. *Colorado*, 259 U. S. 419; *Hudson Water Co.* v. *McCarter*, 209 U. S. 349, 354–357; *Kansas* v. *Colorado*, 185 U. S. 125, s.c. 206 U. S. 46; *Georgia v. Tennessee Copper Co.*, 206 U. S. 230, 237–8; *Richey Co.* v. *Miller & Lux*, 218 U. S. 258; *Missouri* v. *Illinois*, 180 U. S. 208, s.c. 200 U. S. 496; *Gutierres* v. *Albuquerque L. & L. Co.*, 188 U. S. 545, 552, 553; *Shively* v. *Bowlby*, 152 U. S. 1.

The State of Arizona may accept or reject the compact, at its election, but the compact is now effective among the six approving States and the United States. Appropriations of funds by Congress since approval of the compact have "signified the consent of that body to its validity." *Green* v. *Biddle*, 8 Wheat. 1, 26.

The compact binds the United States, its rights "in or to the waters of the Colorado River and its tributaries," and its property within the Colorado River drainage. See § 13, pars. b, c, and d, Boulder Canyon Project Act. It binds and is conclusive upon the six approving States, their citizens and inhabitants and their rights and property within the Colorado River Basin. *Rhode Island* v. *Massachusetts*, 12 Pet. 657, 725; *Kansas* v. *Colorado*,

206 U. S. 46, 98; *Georgia* v. *Tennessee Copper Co.*, 206 U. S. 230, 237–8; *Richey Co.* v. *Miller & Lux*, 218 U. S. 258, 261; *Virginia* v. *Tennessee*, 148 U. S. 503, 525.

Rights vesting under the compact are protected by the Constitution from impairment. *Olin* v. *Kitzmiller*, 259 U. S. 260; *Green* v. *Biddle*, 8 Wheat. 1; *Hawkins* v. *Barney*, 5 Pet. 457; *Stearns* v. *Minnesota*, 179 U. S. 223; *Pennsylvania* v. *Wheeling Bridge Co.*, 13 How. 518; *Tucker* v. *Ferguson*, 22 Wall. 143, 155.

The compact is conclusive with respect to the subject matter. Its construction is a judicial question. *Poole* v. *Fleeger*, 11 Pet. 185, 209–210; *id.* (Baldwin, J.), Appendix to 11 Pet. pp. 170a, 175–6; *Rhode Island* v. *Massachusetts*, 12 Pet. 657, 725; *Sim* v. *Irvine*, 3 Dall. 425, 454; *Marlatt* v. *Silk*, 11 Pet. 1, 2, 18; *Burton* v. *Williams*, 3 Wheat, 529, 533.

Arizona has not approved the compact and is not bound by its provisions. The enforcement of the compact among the approving States will not injure Arizona. It is inoperative as regards that State, and will remain so until approved by the state legislature.

Messrs. Dean G. Acheson and *Clifton Mathews*, with whom *Mr. K. Berry Peterson*, Attorney General of Arizona, was on the brief, for Arizona.

This is not a suit against the United States. *Philadelphia Co.* v. *Stimson*, 223 U. S. 605; *United States* v. *Lee*, 106 U. S. 196; *Belknap* v. *Schild*, 161 U. S. 10, 16–18; *Scranton* v. *Wheeler*, 179 U. S. 141, 152, 153; *American School* v. *McAnnulty*, 187 U. S. 94, 107–111; *Lane* v. *Watts*, 234 U. S. 525, 536–540; *Northern Pac. Ry. Co.* v. *North Dakota*, 250 U. S. 135, 151, 152; *Payne* v. *Central Pac. Ry. Co.*, 255 U. S. 228, 238; *Little* v. *Barreme*, 2 Cranch 170, 177–179; *Noble* v. *Union River Logging Ry. Co.*, 147 U. S. 165, 171, 172; *Wm. Cramp & Sons Co.* v. *International Curtis Marine Turbine Co.*, 246 U. S. 28,

40; *Ex parte Young*, 209 U. S. 123, 149–161; *Truax* v. *Raich*, 239 U. S. 33; *Public Service Co.* v. *Corboy*, 250 U. S. 153, 159; *Looney* v. *Crane Co.*, 245 U. S. 178, 191.

The bill presents a justiciable controversy within the jurisdiction of this Court.

The right of Arizona to control the appropriation and use of waters within its boundaries, including the erection therein of storage and diversion works, and to preserve such water and the use thereof for its people, are rights which the State may protect by suit in this Court. *Georgia* v. *Tennessee Copper Co.*, 206 U. S. 230, 237; *Kansas* v. *Colorado*, 206 U. S. 46, 99; *Hudson County Water Co.* v. *McCarter*, 209 U. S. 349, 355; *Missouri* v. *Holland*, 252 U. S. 416, 431; *Trenton* v. *New Jersey*, 262 U. S. 182; *New York* v. *New Jersey*, 256 U. S. 296, 301–302; *Colorado* v. *Toll*, 268 U. S. 228, 230–231.

The standing of Arizona to assert such rights of quasi-sovereignty in this Court is in no way diminished by the fact that the Colorado River flows within or upon the borders of other States as well as Arizona. *Kansas* v. *Colorado*, 206 U. S. 46; *Wyoming* v. *Colorado*, 259 U. S. 419; *Bean* v. *Morris*, 221 U. S. 485.

These rights are not political rights, beyond the cognizance of this Court. *Georgia* v. *Stanton*, 6 Wall. 50; *Massachusetts* v. *Mellon*, 262 U. S. 447.

Defendant Wilbur threatens to invade the quasi-sovereign rights of Arizona by building a dam within its jurisdiction and diverting and using water from its jurisdiction in violation of its laws. Obvious and fundamental considerations of preserving and wisely administering the greatest resource of an arid State led to the enactment of these laws. They secure interests of the State in persons and property as vital as any that it has. If the bill stated no more than that acts of this defendant, done and threatened to be done in Arizona, under a statute which was an unconstitutional interference with

rights reserved to the State, invaded the sovereign rights of the State in the waters within its jurisdiction in contravention of its will manifested in statutes, it would be a reasonable and proper means of asserting the quasi-sovereign rights of the State. *Missouri* v. *Holland,* 252 U. S. 416; *Colorado* v. *Toll,* 268 U. S. 228; *Marshall Dental Mfg. Co.* v. *Iowa,* 226 U. S. 460.

Defendant Wilbur also threatens to prevent any use in Arizona of unappropriated Colorado River water now flowing there, and, at the same time, to deliver such water for use in other States under contracts, adverse to Arizona, for permanent service.

The Act, in § 5, provides that: "No person shall have or be entitled to have the use for any purpose of the water stored as aforesaid except by contract made as herein stated." The contracts are to be made by the Secretary of the Interior, are to impose, except upon users in the Imperial and Coachella Valleys in California, such charges as he may determine, and are to provide that all use of water so permitted is subject to the Colorado River compact. Section 8 (a) of the Act and the defendant's water regulations explicitly so require.

Under the compact the only water of which the right to exclusive beneficial use in perpetuity may be acquired in the Lower Basin is the water apportioned to that basin. Such apportionment is limited to 7,500,000 acre-feet of water per annum by Article III (a). The Colorado brief contends that paragraph (b) of Article III operates to increase this apportionment to 8,500,000 for the Lower Basin. This, we submit, is not the case. For the purposes of the case it makes little difference whether the apportionment to the Lower Basin is 7,500,000 or 8,500,000 acre-feet per annum. The existing appropriations of 6,500,000 acre-feet and the threatened delivery of 1,050,000 acre-feet to Los Angeles will exhaust the

former, and out of the latter leave only 950,000 acre-feet for the three Lower Basin States. There are immediate needs in Arizona alone of 4,500,000 acre-feet. The bill alleges the existence of actual projects to irrigate 1,000,000 acres of land in Arizona not now irrigated but susceptible of irrigation from the Colorado River. This will require the appropriation of 4,500,000 acre-feet of water annually. Permits to appropriate this water have been granted by the State.

In Arizona, because of the expense of constructing and operating diversion dams, canals and other works necessary for irrigation, irrigable tracts must be combined into large projects operated and administered as a unit and requiring financing on a large scale. This financing is impossible unless water can be appropriated and the right to its beneficial use in perpetuity acquired. Without this right there is no security whatever for the financing.

The very purpose and effect of the Act and the defendant's water regulations and contract is to prevent the citizens of Arizona from appropriating—i. e., acquiring the right in perpetuity to exclusive beneficial use of—any part of the unappropriated flow of the stream, and to force them to accept from the defendant Wilbur a mere license subject to the terms of the compact. To say, as do the defendant States, that Arizona is not bound by the compact is a mere sophistry. For it appears that these States wrote the provisions of the Act here shown to be so harmful to Arizona for the very purpose of subjecting her to the compact. H. Rep. 1657, 69th Cong. 2d Sess., p. 10.

It is plain from the Act itself that its purpose and effect is "to enthrone the compact," and force Arizona and its people, as a condition to any use of the unappropriated flow of the stream, to forego the right to its continued use in perpetuity granted by the laws of Arizona,

and surrender its use to subsequent appropriators in the Upper Basin, in Mexico, or upon a further apportionment made in the future.

It is not necessary that the bill should deny title in the United States to any land necessary for appropriation of unappropriated water in Arizona.

The motions to dismiss admit Arizona's allegation that the Colorado River is not navigable. This is an allegation of fact. Facts not appearing on the face of the bill cannot be considered in determining a demurrer or motion to dismiss. *Payne* v. *Central Pac. Ry. Co.*, 255 U. S. 228, 232; *Stewart* v. *Masterson*, 131 U. S. 151, 158.

The Court cannot properly take judicial notice that the Colorado River is navigable. *The Montello*, 11 Wall. 411, s. c., 20 Wall. 430; *United States* v. *Rio Grande Dam Co.*, 174 U. S. 690; *Economy Light & Power Co.* v. *United States*, 256 U. S. 113.

These cases establish the proposition that courts do not take judicial notice of the navigability of a stream, unless its navigability is a matter of common knowledge and free from doubt. See also *Donnelly* v. *United States*, 228 U. S. 243; *The Daniel Ball*, 10 Wall. 557, 561. Similar questions were involved in *St. Anthony Water Co.* v. *Water Commissioners*, 168 U. S. 349, 359; *Leovy* v. *United States*, 177 U. S. 621, 627, 635, 637; *Oklahoma* v. *Texas*, 258 U. S. 574, 590, 591; *Brewer-Elliott Oil & Gas Co.* v. *United States*, 260 U. S. 77, 86; *United States* v. *Holt State Bank*, 270 U. S. 49, 56, 57. Cf. *United States* v. *Utah*, 279 U. S. 816, *ante*, p. 64.

The Court is not bound by the declaration of purposes contained in the Act, but may determine its real purpose by considering its effect. *United States* v. *Des Moines Nav. & Ry. Co.*, 142 U. S. 510, 544; *Atchison, T. & S. F. R. Co.* v. *Matthews*, 174 U. S. 96, 104; *Hammer* v. *Dagenhart*, 247 U. S. 251, 271; *Child Labor Tax Case*, 259 U. S.

20; *Hill* v. *Wallace,* 259 U. S. 44; *Linder* v. *United States,* 268 U. S. 5; *Henderson* v. *Mayor,* 92 U. S. 259, 268; *People* v. *Compagnie Generale Transatlantique,* 107 U. S. 59, 63; *Mugler* v. *Kansas,* 123 U. S. 623, 661; *Minnesota* v. *Barber,* 136 U. S. 313, 319; *Foster-Fountain Packing Co.* v. *Haydel,* 278 U. S. 1, 10.

By this Act Congress has attempted to exercise control of the Colorado River and its tributaries, not for the improvement of navigation, but for other purposes, the accomplishment of which would, if the river were navigable, destroy its navigability.

By approving and attempting to enforce the compact, Congress has recognized and undertaken to protect "present perfected rights" of water users in the Upper and Lower Basins to divert and consume annually 9,000,000 acre-feet of water, which is one-half of the total average annual flow of the Colorado River System. Of this 9,000,000 acre-feet of appropriated water the Upper Basin has appropriated and is using 2,500,000 acre-feet and the Lower Basin 6,500,000 acre-feet annually.

By the diversion of this water and the creation of these "present perfected rights," the Colorado River, if it ever was navigable (which Arizona denies), has lost what little navigability it once possessed. Even in the '60s and '70s of the last century, before any appreciable quantity of water had been diverted from the river, the one great and (even then) insuperable obstacle to its navigation was lack of water. As diversions increased and present rights became perfected, even the slight (so-called) navigation which once existed on the river disappeared. That its disappearance was caused, in part at least, by the diversion and consumption of this 9,000,000 acre-feet of water cannot be doubted. Does the Act provide that the water thus lost to navigation shall be restored? On the contrary, by approving the compact, it provides, in effect, that the loss shall be made perpetual.

As to water not yet appropriated, the compact and the Act clearly contemplate that eventually all the water of the Colorado River System will be diverted and used consumptively, and not for navigation. It is no answer to say that the water will be used for navigation first, and afterwards taken out and used consumptively. At least one-half of it is to be used in the Upper Basin, hundreds of miles above the site of the proposed dam and reservoir. By the compact, which the Act approves, the Upper Basin is given the lion's share (five-sixths) of the apportioned water now remaining unappropriated. Whatever excuse or justification there may have been for thus favoring the Upper Basin, it cannot be pretended that improvement of navigation was thereby aimed at or accomplished.

Instead of being designed to improve navigation, the compact was drawn with the unmistakable intention of dedicating the river to uses inconsistent with navigation. That is not a mere speculation, but appears from the express language of the compact. The reason for this was stated by the then Secretary of Commerce, Honorable Herbert Hoover, federal representative on and chairman of the Colorado River Commission, in his report transmitting the compact to Congress. H. Doc. 605, 67th Cong., 4th Sess., p. 4.

By the terms of the Act itself, the recital therein that one of its purposes is the improvement of navigation must yield to and be controlled by the declaration in the compact that "the Colorado River has ceased to be navigable for commerce," and that "the use of its waters for purposes of navigation shall be subservient to the uses of such waters for domestic, agricultural, and power purposes."

Even if navigability were conceded, it would still be true that the Act, by accepting and approving this decla-

ration in the compact, shows on its face that improvement of navigation is not its purpose. Also, though navigability were conceded, it would still be true that the effect of the Act is not to improve, but to destroy such navigability.

By §§ 1, 6, and 8 (a) of the Act, the construction, maintenance, operation and use of the project are made subject to the terms and provisions of the compact. Since, in the case of conflict, the provisions of the Act must yield to those of the compact, any use of the project which may be inconsistent with the compact (though apparently authorized by the Act) is prohibited.

The Act specifies, definitely and concretely, only two uses to which the project shall be put. One is the storage and sale of water. The other is the generation and sale of electrical power. Both uses would be hurtful rather than helpful to navigation, if there were any navigation to be hurt or helped.

It requires no argument to show that the navigation of a river, which has become non-navigable from lack of water, cannot be improved by taking more water out of it. Yet that is what this Act proposes to do. All contracts for the sale and delivery of water are required to be made subject to the Colorado River Compact, which subordinates navigation to other uses of the river. The Act places no limit on the quantity of water which the Secretary may divert and sell, nor does it restrict him as to the place of diversion or as to the place of consumption.

Under color of the Act, defendant Wilbur has actually made a pretended contract whereby he undertakes to deliver to the Metropolitan Water District of Southern California, 1,050,000 acre-feet annually of the water to be stored in the proposed reservoir. This great quantity of water—more than one-eighth of the total unappropriated flow at Black Canyon—is to be delivered at a point im-

mediately below the dam or, at the option of the District, it may be diverted directly from the reservoir. The District where this water is to be consumed is some 300 miles from the Colorado River and outside of its watershed.

Even if the Colorado River were navigable, it could not be pretended that navigation thereof would be improved by the main canal and appurtenant structures connecting Laguna Dam with the Imperial Valley. The whole purpose of the canal is to take water out of the river, and to take it out in greater quantities and at a point higher up the river than now.

Even in the old days, when its normal flow (now reduced by one-half) had not been depleted, it was only in seasons of high water that the Colorado River ever approached a condition of navigability—a condition which, even then, it never quite attained. By storing the water and using it for the generation of electric power, as proposed in the Act, the flow of the river will be "equated;" there will be no more seasons of high water, and all possibility of navigation will be automatically ended.

As introduced, the bill did not contain the word "navigation." The words "improving navigation" and "improvement of navigation" were inserted as amendments, upon recommendation of the House Committee on Irrigation and Reclamation, after hearings, in the course of which the constitutionality of the bill had been questioned. H. Rep. 918, 70th Cong., 1st Sess., p. 1. No other reference was inserted or proposed. Minority Report, l. cit., p. 14.

By this Act, even assuming the river to be navigable, Congress has exceeded its powers and has invaded rights reserved to the State over navigable water. *Martin* v. *Waddell,* 16 Pet. 367, 410; *Pollard* v. *Hagan,* 3 How. 212, 230; *Mumford* v. *Wardwell,* 6 Wall. 423, 436; *St. Clair County* v. *Lovingston,* 23 Wall. 46, 68; *McCready* v. *Vir-*

ginia, 94 U. S. 391, 394; *Hardin* v. *Jordan,* 140 U. S. 371, 381; *Knight* v. *U. S. Land Assn.,* 142 U. S. 161, 183; *Kansas* v. *Colorado,* 206 U. S. 46, 93; *Scott* v. *Lattig,* 227 U. S. 229, 242; *Port of Seattle* v. *Oregon & Wash. R. Co.,* 255 U. S. 56, 63; *United States* v. *River Rouge Imp. Co.,* 269 U. S. 411, 419.

If and wherever navigable, the Colorado River belongs to and is owned by the State in which it is situated. The State in its sovereign capacity owns the water in the river, the bed of the river, and its banks to high water mark. This is a full proprietary ownership. It is subject to the power of Congress to regulate commerce by improving navigation. It is not subject to any other restriction or limitation. The State, being the owner, has the exclusive and unrestricted right to use and dispose of the water in the river and the land under it, to authorize the use thereof by others, and to regulate and control such use in whatever manner and to whatever extent it sees fit, subject only to the power of Congress in respect to navigation.

Even assuming the Colorado River to be navigable, the United States does not own it, and has no right to use it or control it for any purpose, except that of regulating commerce by improving navigation. Not being the owner, the United States cannot, for any purpose or upon any pretext, sell or dispose of the water in the river or the land under it.

The fact that other States have rights in the Colorado River adds nothing to the powers of Congress. Where the river forms the boundary between Arizona and another State, each owns to the middle of the stream. If they disagree about the division or use of boundary waters, their dispute, like any other interstate boundary dispute, can be settled by a decree of this Court. Congress is powerless to settle it or to make any division or appor-

tionment of such waters. *Louisiana* v. *Mississippi*, 202 U. S. 1, 40; *Washington* v. *Oregon*, 211 U. S. 127, 131; *New Mexico* v. *Colorado*, 267 U. S. 30, 41. The same is true of a controversy between an upper and a lower State. *Kansas* v. *Colorado*, 185 U. S. 125, 145; s. c. 206 U. S. 46, 98; *Wyoming* v. *Colorado*, 259 U. S. 419, 465.

The result, therefore, of assuming the Colorado River to be navigable is to establish even more firmly Arizona's right to appropriate and use its waters and to regulate and control their appropriation and use by others.

The Act cannot be sustained as a regulation respecting property of the United States under Article IV, § 3, cl. 2, of the Constitution. It is not pretended, and cannot be, that this Act provides for the reclamation of any public land.

The Act goes far beyond the power of Congress over the public land.

The Act is not an exercise of any other power delegated to Congress.

MR. JUSTICE BRANDEIS delivered the opinion of the Court.

The Boulder Canyon Project Act, December 21, 1928, c. 42, 45 Stat. 1057, authorizes the Secretary of the Interior, at the expense of the United States, to construct at Black Canyon on the Colorado River, a dam, a storage reservoir, and a hydroelectric plant; provides for their control, management, and operation by the United States; and declares that the authority is conferred "subject to the terms of the Colorado River compact," "for the purpose of controlling the floods, improving navigation and regulating the flow of the Colorado River, providing for storage and for the delivery of the stored waters thereof for reclamation of public lands and other beneficial uses

exclusively within the United States, and for the generation of electrical energy as a means of making the project herein authorized a self-supporting and financially solvent undertaking."

The Colorado River Compact is an agreement for the apportionment of the water of the river and its tributaries. After several years of preliminary informal discussion, Colorado, Wyoming, Utah, New Mexico, Arizona, Nevada, and California—the seven States through which the river system extends—appointed commissioners in 1921 to formulate an agreement; and Congress, upon request, gave its assent, and authorized the appointment of a representative to act for the United States. Act of August 19, 1921, c. 72, 42 Stat. 171. On November 24, 1922, these commissioners and the federal representative signed an agreement to become effective when ratified by Congress and the legislatures of all of these States. The Boulder Canyon Project Act approved this agreement subject to certain limitations and conditions, the approval to become effective upon the ratification of the compact, as so modified, by the legislatures of California and at least five of the six other States. The legislatures of all these States except Arizona ratified the modified compact and the Act was accordingly declared to be in effect. Proclamation of June 25, 1929, 46 Stat. 20.

On October 13, 1930, Arizona filed this original bill of complaint against Ray Lyman Wilbur, Secretary of the Interior, and the States of California, Nevada, Utah, New Mexico, Colorado and Wyoming. It charges that Wilbur is proceeding in violation of the laws of Arizona to invade its quasi-sovereign rights by building at Black Canyon on the Colorado River a dam, half of which is to be in Arizona, and a reservoir to store all the water of the river flowing above it in Arizona, for the purpose of diverting part of these waters from Arizona for consumptive use

elsewhere, and of preventing the beneficial consumptive use in Arizona of the unappropriated water of the river now flowing in that State; that these things are being done under color of authority of the Boulder Canyon Project Act; that this Act purports to authorize the construction of the dam and reservoir, the diversion of the water from Arizona, and its perpetual use elsewhere; that the Act directs and requires Wilbur to permit no use or future appropriation of the unappropriated water of the main stream of the Colorado River, now flowing in Arizona and to be stored by the said dam and reservoir, except subject to the conditions and reservations contained in the Colorado River Compact; and that the Act thus attempts to enforce as against Arizona, and to its irreparable injury, the compact which it has refused to ratify. The bill prays that the compact and the Act " and each and every part thereof, be decreed to be unconstitutional, void and of no effect; that the defendants and each of them be permanently enjoined and restrained from enforcing or carrying out said compact or said act, or any of the provisions thereof, and from carrying out the three pretended contracts hereinabove referred to, or any of them, or any of their provisions, [meaning certain contracts executed by Wilbur on behalf of the United States for the use of the stored water and developed power after the project shall have been completed] and from doing any other act or thing pursuant to or under color of said Boulder Canyon Project Act."

Process was made returnable on January 12, 1931; and on that day all of the defendants moved that the bill be dismissed. The grounds assigned in the motions are (1) that the bill does not join the United States, an indispensable party; (2) that the bill does not present any case or controversy of which the Court can take judicial cognizance; (3) that the proposed action of the defendants will not invade any vested right of the plaintiff or of any

of its citizens; (4) that the bill does not state facts sufficient to constitute a cause of action against any of the defendants. The case was heard on these motions.

The wrongs against which redress is sought are, first, the threatened invasion of the quasi-sovereignty of Arizona by Wilbur in building the dam and reservoir without first securing the approval of the State Engineer as prescribed by its laws; and, second, the threatened invasion of Arizona's quasi-sovereign right to prohibit or to permit appropriation, under its own laws, of the unappropriated water of the Colorado River flowing within the State. The latter invasion, it is alleged, will consist in the exercise, under the Act and the compact, of a claimed superior right to store, divert, and use such water.

First. The claim that quasi-sovereign rights of Arizona will be invaded by the mere construction of the dam and reservoir rests upon the fact that both structures will be located partly within the State. At Black Canyon, the site of the dam, the middle channel of the river is the boundary between Nevada and Arizona. The latter's statutes prohibit the construction of any dam whatsoever until written approval of plans and specifications shall have been obtained from the State Engineer; and the statutes declare in terms that this provision applies to dams to be erected by the United States. Arizona Laws 1929, c. 102, §§ 1–4. See also Revised Code of 1928, §§ 3280–3286. The United States has not secured such approval; nor has any application been made by Wilbur, who is proceeding to construct said dam in complete disregard of this law of Arizona.

The United States may perform its functions without conforming to the police regulations of a State. *Johnson* v. *Maryland,* 254 U. S. 51; *Hunt* v. *United States,* 278 U. S. 96. If Congress has power to authorize the construction of the dam and reservoir, Wilbur is under no obligation to submit the plans and specifications to the State

Engineer for approval.[1] And the Federal Government has the power to create this obstruction in the river for the purpose of improving navigation if the Colorado River is navigable. *Pennsylvania* v. *Wheeling and Belmont Bridge Co.*, 18 How. 421, 430; *South Carolina* v. *Georgia*, 93 U. S. 4, 11; *Gibson* v. *United States*, 166 U. S. 269; *United States* v. *Chandler-Dunbar Water Power Co.*, 229 U. S. 53, 64; *Greenleaf Johnson Lumber Co.* v. *Garrison*, 237 U. S. 251, 258–68. Arizona contends both that the river is not navigable, and that it was not the purpose of Congress to improve navigation.

The bill alleges that "the river has never been, and is not now, a navigable river." The argument is that the question whether a stream is navigable is one of fact; and that hence the motion to dismiss admits the allegation that the river is not navigable. It is true that whether a stream is navigable in law depends upon whether it is navigable in fact; *United States* v. *Utah*, *ante*, p. 64;[2] and that a motion to dismiss, like a demurrer, admits every well-pleaded allegation of fact, *Payne* v. *Central Pacific Ry. Co.*, 255 U. S. 228, 232. But a court may take judicial notice that a river within its jurisdiction is navigable. *United States* v. *Rio Grande Dam & Irrigation Co.*, 174 U. S. 690, 697; *Wear* v. *Kansas*, 245 U. S. 154, 158.

[1] The further allegation that the proposed dam, reservoir, and power plants, when completed, may not be subject to the taxing power of Arizona, may be disregarded. The Act provides that the title to such works shall remain forever in the United States, and such exemption is but an ordinary incident of any public undertaking by the Federal Government.

[2] Compare *The Daniel Ball*, 10 Wall. 557, 563; *The Montello*, 20 Wall. 430; *St. Anthony Falls Water Power Co.* v. *St. Paul Water Commissioners*, 168 U. S. 349; *Leovy* v. *United States*, 177 U. S. 621; *Economy Light & Power Co.* v. *United States*, 256 U. S. 113; *Oklahoma* v. *Texas*, 258 U. S. 574, 590, 591; *Brewer-Elliott Oil & Gas Co.* v. *United States*, 260 U. S. 77, 86; *United States* v. *Holt State Bank*, 270 U. S. 49, 56, 57.

We know judicially, from the evidence of history, that a large part of the Colorado River south of Black Canyon was formerly navigable,[3] and that the main obstacles to navigation have been the accumulations of silt coming from the upper reaches of the river system, and the irregularity in the flow due to periods of low water.[4] Commercial

[3] Navigability extended as far north as the mouth of the Virgin River at Black Canyon. See Report Upon the Colorado River of the West, H. R. Ex. Doc. No. 90, 36th Cong., 1st Sess., June 5, 1860, pts. I–II, and maps; H. R. Mis. Doc. No. 37, 42d Cong., 1st Sess., April 15, 1871; H. R. Ex. Doc. No. 18, 51st Cong., 2d Sess., December 2, 1890; H. R. Doc. No. 101, 54th Cong., 1st Sess., December 27, 1895; H. R. Doc. No. 67, 56th Cong., 2d Sess., December 5, 1900; Ann. Rep., Chief of Engineers, War Department, 1879, pp. 1773–85; Hodge, Arizona As It Is, (1877) pp. 208–10; Hinton, Handbook to Arizona, (1878) pp. 66–67, 371–72, and maps; Freeman, The Colorado River, (1923) cc. I, V, VII, particularly pp. 146–67; Sloan, History of Arizona, (1930), vol. i, pp. 216–36.

By the Act of July 5, 1884, c. 229, 23 Stat. 133, 144, Congress appropriated $25,000 for the improvement of navigation on the Colorado River between Fort Yuma and a point thirty miles above Rioville, which was located at the mouth of the Virgin River. An additional $10,000 for a levee at Yuma was appropriated by the Act of July 22, 1892, c. 158, 27 Stat. 88, 108–09. See H. R. Doc. Nos. 204 and 237, 58th Cong., 2d Sess., December 18, 1903. As to navigability north and east of Boulder Canyon, see *United States* v. *Utah, ante,* p. 64.

[4] See Report by Director of Reclamation Service on Problems of Imperial Valley and Vicinity, Sen. Doc. No. 142, 67th Cong., 2d Sess., February 23, 1922, pp. 3–10, 240; Report of the Colorado River Board on the Boulder Dam Project, H. R. Doc. No. 446, 70th Cong., 2d Sess., December 3, 1928, pp. 12–14; Report of the All-American Canal Board, July 22, 1919, pp. 24–33. For the geological history of the lower Colorado area, see Information Presented to the House Committee on Irrigation and Reclamation in connection with H. R. 2903, 68th Cong., 1st Sess., 1924, pp. 135–43. All the former documents on the Colorado River Development were adopted as part of the hearings on Boulder Canyon Project Act. See Hearings Before the House Committee on Irrigation and Reclamation on H. R. 5773, 70th Cong., 1st Sess., January 6, 1928, pp. 8–10.

disuse resulting from changed geographical conditions and a Congressional failure to deal with them, does not amount to an abandonment of a navigable river or prohibit future exertion of federal control. *Economy Light & Power Co.* v. *United States,* 256 U. S. 113, 118, 124. We know from the reports of the committees of the Congress which recommended the Boulder Canyon project that, in the opinion of the government engineers, the silt will be arrested by the dam; that, through use of the stored water, irregularity in its flow below Black Canyon can be largely overcome; and that navigation for considerable distances both above and below the dam will become feasible.[5] Compare *St. Anthony Falls Water Power Co.* v. *St. Paul Water Commissioners,* 168 U. S. 349, 359; *United States* v. *Cress,* 243 U. S. 316, 326.

The bill further alleges that the "recital in said act that the purpose thereof is the improvement of naviga-

[5] The House Committee on Irrigation and Reclamation stated that one of the purposes of the Act was to have the flow of the river below the dam "regulated and even" and thus "susceptible to use by power boats and other small craft. The great reservoir will, of course, be susceptible of navigation." See Boulder Canyon Project, H. R. Rep. 918, 70th Cong., 1st Sess., March 15, 1928, p. 6. As to control of silt deposits, see *id.,* pp. 16–17. A similar report was made to the Senate. See Boulder Canyon Project, Sen. Rep. 592, 70th Cong., 1st Sess., March 20, 1928, pp. 5–7, 16–20. The House Committee said in summary: "The proposed dam would improve navigation probably more than any other works which could be constructed. The dam will so regulate the flow as to make the river very practicable of navigation for 200 miles below and impound water above which could easily be navigated for more than 75 miles." H. R. Rep. 918, *supra,* p. 22. Compare Hearings Before the House Committee on Irrigation and Reclamation on H. R. 5773, 70th Cong., 1st Sess., pt. 3, January 13–14, 1928, pp. 340–41; Hearings Before the Senate Committee on Irrigation and Reclamation on S. 728 and S. 1274, *id.,* January 17–21, 1928, pp. 368–77, 384, 420–21. Since below Black Canyon the Colorado River is a boundary stream, such navigation will be at least partially interstate.

tion" "is a mere subterfuge and false pretense." It quotes a passage in Art. IV of the compact, to which the Act is subject, which declares that "inasmuch as the Colorado River has ceased to be navigable for commerce and the reservation of its waters for navigation would seriously limit the development of its basin, the use of its waters for purposes of navigation shall be subservient to the uses of such waters for domestic, agricultural, and power purposes;" and alleges that "even if said river were navigable, the diversion, sale and delivery of water therefrom as authorized in said act, would not improve, but would destroy, its navigable capacity." [6]

Into the motives which induced members of Congress to enact the Boulder Canyon Project Act, this Court may not enquire. *McCray* v. *United States,* 195 U. S. 27, 53–59; *Weber* v. *Freed,* 239 U. S. 325, 329–30; *Wilson* v. *New,* 243 U. S. 332, 358–59; *United States* v. *Doremus,* 249 U. S. 86, 93–94; *Dakota Central Tel. Co.* v. *South Dakota,* 250 U. S. 163, 187; *Hamilton* v. *Kentucky Distilleries Co.,* 251 U. S. 146, 161; *Smith* v. *Kansas City Title & Trust Co.,* 255 U. S. 180, 210.[7] The Act declares that the authority to construct the dam and reservoir is conferred, among other things, for the purpose of "improving navigation and regulating the flow of the river." As the river is navigable and the means which the Act provides are not unrelated

[6] Reliance is also had upon the fact that the bill as originally introduced contained no reference to navigation, but that the statements of this purpose, found in the Act, were inserted during the course of the hearings. See Minority Views, H. R. Rep. No. 918, 70th Cong., 1st Sess., pt. 3, pp. 14–18.

[7] Similarly, no inquiry may be made concerning the motives or wisdom of a state legislature acting within its proper powers. *United States* v. *Des Moines Nav. & Ry. Co.,* 142 U. S. 510, 544; *Atchison, Topeka & Santa Fé R. Co.* v. *Matthews,* 174 U. S. 96, 102; *Calder* v. *Michigan,* 218 U. S. 591, 598; *Rast* v. *Van Deman & Lewis Co.,* 240 U. S. 342, 357, 366. Compare *O'Gorman & Young, Inc.,* v. *Hartford Fire Ins. Co.,* 282 U. S. 251, 258.

to the control of navigation, *United States* v. *River Rouge Improvement Co.*, 269 U. S. 411, 419, the erection and maintenance of such dam and reservoir are clearly within the powers conferred upon Congress. Whether the particular structures proposed are reasonably necessary, is not for this Court to determine. Compare *Fong Yue Ting* v. *United States*, 149 U. S. 698, 712–14; *Oceanic Steam Navigation Co.* v. *Stranahan*, 214 U. S. 320, 340; *United States* v. *Chandler-Dunbar Water Power Co.*, 229 U. S. 53, 65, 72–73; *Everard's Breweries* v. *Day*, 265 U. S. 545, 559. And the fact that purposes other than navigation will also be served could not invalidate the exercise of the authority conferred, even if those other purposes would not alone have justified an exercise of Congressional power. Compare *Veazie Bank* v. *Fenno*, 8 Wall. 533, 548; *Kaukauna Water Power Co.* v. *Green Bay & Mississippi Canal Co.*, 142 U. S. 254, 275; *In re Kollock*, 165 U. S. 526, 536; *Weber* v. *Freed*, *supra*; *United States* v. *Doremus*, *supra*.

It is urged that the Court is not bound by the recital of purposes in the Act; that we should determine the purpose from its probable effect; and that the effect of the project will be to take out of the river, now non-navigable through lack of water, the last half of its remaining average flow. But the Act specifies that the dam shall be used: "First, for river regulation, improvement of navigation and flood control; second, for irrigation and domestic uses and satisfaction of present perfected rights . . .; and third, for power." It is true that the authority conferred is stated to be "subject to the Colorado River Compact," and that instrument makes the improvement of navigation subservient to all other purposes. But the specific statement of primary purpose in the Act governs the general references to the compact. This Court may not assume that Congress had no purpose

to aid navigation, and that its real intention was that the stored water shall be so used as to defeat the declared primary purpose. Moreover, unless and until the stored water, which will consist largely of flood waters now wasted, is consumed in new irrigation projects or in domestic use, substantially all of it will be available for the improvement of navigation. The possible abuse of the power to regulate navigation is not an argument against its existence. *Lottery Case,* 188 U. S. 321, 363; *Flint* v. *Stone Tracy Co.,* 220 U. S. 107, 168–69; *Wilson* v. *New,* 243 U. S. 332, 354; *Hamilton* v. *Kentucky Distilleries, supra; Alaska Fish Salting & By-Products Co.* v. *Smith,* 255 U. S. 44, 48.

Since the grant of authority to build the dam and reservoir is valid as an exercise of the Constitutional power to improve navigation, we have no occasion to decide whether the authority to construct the dam and reservoir might not also have been constitutionally conferred for the specified purpose of irrigating public lands of the United States.[8] Compare *United States* v. *Rio Grande Dam and Irrigation Co.,* 174 U. S. 690, 703; *United States* v. *Alford,* 274 U. S. 264. Or for the speci-

[8] "A large part of the land through which the Colorado River flows, or which is adjacent or tributary to it, is public domain of which the United States is the proprietor." Colorado River Compact, H. R. Doc. No. 605, 67th Cong., 4th Sess., March 2, 1923, p. 6. As to extent of this land and irrigation projects on it in connection with the Boulder Canyon Dam, see Report of the Director of the Reclamation Service on Problems of Imperial Valley and Vicinity, Sen. Doc. No. 142, 67th Cong., 2d Sess., February 23, 1922, appendices C-D. See also Department of Interior, Twenty-fifth Ann. Rep. Bureau of Reclamation (1926), pp. 2–29; Vacant Public Lands on July 1, 1929, Department of Interior, General Land Office, Circular No. 1197, pp. 3-10; Report of the International Water Commission, H. R. Doc. No. 359, 71st Cong., 2d Sess., April 21, 1930, pp. 98-177, and Bibliography, p. 97.

fied purpose of regulating the flow and preventing the floods in this interstate river.[9] Or as a means of conserving and apportioning its waters among the States equitably entitled thereto. Or for purpose of performing international obligations.[10] Compare *Missouri* v. *Holland*, 252 U. S. 416.

Second. The further claim is that the mere existence of the Act will invade quasi-sovereign rights of Arizona by preventing the State from exercising its right to prohibit or permit under its own laws the appropriation of unappropriated waters flowing within or on its borders. The opportunity and need for further appropriations are fully set forth in the bill. Arizona is arid and irrigation is necessary for cultivation of additional land. The future growth and welfare of the State are largely dependent

[9] Compare the legislation for Mississippi river flood control, independent of navigation improvements. Joint Resolution of May 2, 1922, c. 175, 42 Stat. 504; Act of September 22, 1922, c. 427, § 13, 42 Stat. 1038, 1047; Act of December 22, 1927, c. 5, 45 Stat. 2, 38; and particularly Act of May 15, 1928, c. 569, 45 Stat. 534.

[10] The Colorado River and its tributaries have frequently been the subject of treaties between the United States and Mexico. See Treaty of Guadalupe Hidalgo, February 2, 1848, Art. VII, in Malloy, United States Treaties, vol. i, pp. 1107, 1111; Gadsden Treaty, December 30, 1853, Art. IV, *id.*, pp. 1121, 1123; Boundary Convention of March 1, 1889, Arts. I, V, *id.*, pp. 1167-92. Compare the 1912 proposals reported in Hearings Before the House Committee on the Irrigation of Arid Lands, 66th Cong., 1st Sess., July 9-14, 1919, Append., pp. 323–26. As to the Rio Grande, see Convention of May 21, 1906, Treaty Series No. 455; 21 Op. Atty. Gen. 274, 282, 518; Sen. Doc. No. 154, 57th Cong., 2d Sess., February 14, 1903. For the international aspects of the proposed Colorado River Development, see Hearings Before the House Committee on Irrigation of Arid Lands, 66th Cong., 1st Sess., July 9–14, 1919, Append., pp. 323–48; Colorado River Compact, H. R. Doc. No. 605, 67th Cong., 4th Sess., March 2, 1923, pp. 5-6; Report of the All-American Canal Board, July 22, 1919, pp. 14-15; Report of International Water Commission, *supra* Note 8, pp. 17-23, 85-283.

upon such reclamation. It is alleged that there are within Arizona 2,000,000 acres not now irrigated which are susceptible of irrigation by further appropriations from the Colorado River.[11] To appropriate water means to take and divert a specified quantity thereof and put it to beneficial use in accordance with the laws of the State where such water is found, and, by so doing, to acquire under such laws, a vested right to take and divert from the same source, and to use and consume the same quantity of water annually forever, subject only to the right of prior appropriations. Under the law of Arizona, the perfected vested right to appropriate water flowing within the State cannot be acquired without the performance of physical acts through which the water is and will in fact be diverted to beneficial use. Topographical conditions make it necessary that land in the State be irrigated in large projects. The Colorado River flows, both on the boundary between Arizona and Nevada, and in Arizona alone, through an almost continuous series of deep canyons, the walls of which rise in Arizona to a height varying from a few hundred to more than 5,000 feet. The cost of installing the dams, reservoirs, canals, and distribution works required to effect any diversion, will be very heavy; and financing on a large scale is indispensable. Such financing will be impossible unless it clearly appears that, at or prior to the time of constructing such works, vested rights to the permanent use of the water will be acquired.

[11] Of the total length of 1,293 miles of the Colorado River, 688 miles are within or on the boundaries of Arizona. After leaving Utah, the main river flows for 292 miles wholly in Arizona. Then, the middle of the channel forms the boundary between Arizona and Nevada for 145 miles; and for 235 miles, the boundary between Arizona and California. Tributaries of the river flow within Arizona for a combined length of 836 miles, and most of these enter the main stream below Black Canyon.

The alleged interference with the right of the State to control additional appropriations is based upon the following facts. The average annual flow of the Colorado River system, including the tributaries, is 18,000,000 acre-feet.[12] Only 9,000,000 acre-feet have been appropriated by Arizona and the defendant States. Of this 3,500,000 acre-feet have been appropriated in Arizona under its laws, and the remaining 5,500,000 acre-feet by the other States. The 9,000,000 acre-feet unappropriated are now subject to appropriation in Arizona under its laws. It is alleged that there are numerous sites suitable for the construction, maintenance, and operation of dams and reservoirs required for the irrigation of land in Arizona; and that actual projects have been planned for the irrigation of 1,000,000 acres, including 100,000 acres owned by the State. For this purpose 4,500,000 acre-feet annually will be additionally required. Permits to appropriate this water have been granted by the State; and definite plans to carry out projects for the building of dams on that part of the river flowing in or on the borders of Arizona have been approved by the State Engineer. It is stated that but for the passage of the Boulder Canyon Project Act, construction work would long since have commenced.

It is conceded that the continued use of the 3,500,000 acre-feet of water already appropriated in Arizona is not now threatened. And there is no allegation that at the present time the enjoyment of these rights is being interfered with in any way. The claim strenuously urged is that the existence of the Act, and the threatened exercise of the authority to use the stored water pursuant to its terms, will prevent Arizona from exercising its right to control the making of further appropriations. It is argued

[12]An acre-foot is the quantity of water required to cover an acre to a depth of one foot—43,560 cubic feet. See *Wyoming* v. *Colorado*, 259 U. S. 419, 458.

that such needed additional appropriations will be prevented because Wilbur proposes to store the entire unappropriated flow of the main stream of the Colorado River at the dam; that Arizona, and those claiming under it, will not be permitted to take any water from the reservoir except upon agreeing that the use shall be subject to the compact; that under the terms of the compact they will not be entitled to appropriate any water in excess of that to which there are now perfected rights in Arizona;[18] and that in order to irrigate land in Arizona it is frequently necessary to utilize rights of way over lands of the United States, and since the Act provides that all such

[18] The allegation is in substance this. Of the average annual flow of 18,000,000 acre-feet, the Act and compact permit the present final appropriation of only 15,000,000. This quantity must satisfy all existing appropriations as well as all future appropriations. Of these 15,000,000, one-half is apportioned to the so-called Upper Basin, which includes Utah, Colorado, Wyoming, and New Mexico. The remaining 7,500,000 acre-feet have been allotted to the so-called Lower Basin, which includes Arizona and parts of Nevada and California. Of the water thus allotted to the lower basin, 6,500,000 acre-feet have already been appropriated; and, under a contract made by Wilbur with the Metropolitan Water District of Southern California, the remaining 1,000,000 are to be diverted to it. Thus it is argued that consistently with the Act and compact, it will be impossible for Arizona to make any further appropriation, unless it be under the following provision. The compact provides that no part of the 3,000,000 acre-feet of the estimated annual flow, not now apportioned, shall be appropriated until after October 1, 1963, as such water may be required to satisfy rights of Mexico, through which country the river flows after leaving the United States. If the satisfaction of recognized Mexican rights reduces the unappropriated water below 1,000,000 acre-feet annually, the lower basin States may require the upper basin States to deliver from their apportionment, one-half of the amount required to meet the deficit. It is claimed that Arizona thus may use, but not legally appropriate, any unappropriated water which is available for use by it; and that this restricted right does not justify the expenditures necessary for putting the water to beneficial use in Arizona.

rights of way or other privileges to be granted by the United States shall be upon the express condition and with the express covenant that they shall be subject to the compact, the Act in effect prevents Arizona and those claiming under it from acquiring such rights.

This contention cannot prevail because it is based not on any actual or threatened impairment of Arizona's rights but upon assumed potential invasions. The Act does not purport to affect any legal right of the State, or to limit in any way the exercise of its legal right to appropriate any of the unappropriated 9,000,000 acre-feet which may flow within or on its borders. On the contrary, section 18 specifically declares that nothing therein "shall be construed as interfering with such rights as the States now have either to the waters within their borders or to adopt such policies and enact such laws as they may deem necessary with respect to the appropriation, control, and use of water within their borders, except as modified" by interstate agreement. As Arizona has made no such agreement, the Act leaves its legal rights unimpaired. There is no allegation of definite physical acts by which Wilbur is interfering, or will interfere, with the exercise by Arizona of its right to make further appropriations by means of diversions above the dam or with the enjoyment of water so appropriated.[14] Nor any

[14] There is in the bill a further allegation that, under color of the Act, Wilbur has seized and taken possession of all that part of the Colorado River which flows in Arizona and on the boundary thereof, and of the water now flowing therein, and of all the dam sites and reservoir sites suitable for irrigation of the Arizona land and for the generation of electric power "and now has said river, said water and said sites in his possession; and has excluded and is now excluding the State of Arizona, its citizens, inhabitants, and property owners from said river, said water and said sites, and from all access thereto; has prevented and is now preventing said State, its citizens, inhabitants and property owners from appropriating any of said 8,000,000 acre-feet of unappropriated water . . ." But from other parts of

specific allegation of physical acts impeding the exercise of its right to make future appropriations by means of diversions below the dam, or limiting the enjoyment of rights so acquired, unless it be by preventing an adequate quantity of water from flowing in the river at any necessary point of diversion.

When the bill was filed, the construction of the dam and reservoir had not been commenced. Years must elapse before the project is completed. If by operations at the dam any then perfected right of Arizona, or of those claiming under it, should hereafter be interfered with, appropriate remedies will be available. Compare *Kansas v. Colorado,* 206 U. S. 46, 117. The bill alleges, that plans have been drawn and permits granted for the taking of additional water in Arizona pursuant to its laws. But Wilbur threatens no physical interference with these projects; and the Act interposes no legal inhibitions on their execution.[15] There is no occasion for determining

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the bill and from the argument, it is clear that there has been no physical taking of possession of anything, and that Wilbur has not trespassed on lands belonging either to Arizona or any of its citizens. This allegation is thus merely a conclusion of law from the fact that Wilbur, in conformity with the provisions of the Act, has made plans for the construction of the dam and reservoir, promulgated regulations concerning the use of the water to be stored, and executed contracts for the use of some of it.

[15] It is also argued that of the 7,500,000 acre-feet allotted by the compact to the upper basin States, only 2,500,000 have already been appropriated, and that thus the presently unused surplus of 5,000,000 acre-feet cannot be appropriated in Arizona. But Arizona is not bound by the compact as it has withheld ratification. If and when withdrawals pursuant to the compact by the upper basin States diminish the amount of water actually available for use in Arizona, appropriate action may then be brought.

The allegation that the inclusion in the compact of the waters of the Gila River (all of which are said to have been appropriated in Arizona) operates to reduce the amount of water which may be taken by that State, can likewise be disregarded. Not being bound

now Arizona's rights to interstate or local waters which have not yet been, and which may never be, appropriated. *New Jersey* v. *Sargent,* 269 U. S. 328, 338. This Court cannot issue declaratory decrees. Compare *Texas* v. *Interstate Commerce Commission,* 258 U. S. 158, 162; *Liberty Warehouse Co.* v. *Grannis,* 273 U. S. 70, 74; *Willing* v. *Chicago Auditorium Assn.,* 277 U. S. 274, 289–90. Arizona has, of course, no constitutional right to use, in aid of appropriation, any land of the United States, and it cannot complain of the provision conditioning the use of such public land. Compare *Utah Power & Light Co.* v. *United States,* 243 U. S. 389, 403–05.

As we hold that the grant of authority to construct the dam and reservoir is a valid exercise of Congressional power, that the Boulder Canyon Project Act does not purport to abridge the right of Arizona to make, or permit, additional appropriations of water flowing within the State or on its boundaries, and that there is now no threat by Wilbur, or any of the defendant States, to do any act which will interfere with the enjoyment of any present or future appropriation, we have no occasion to consider other questions which have been argued. The bill is dismissed without prejudice to an application for relief in case the stored water is used in such a way as to interfere with the enjoyment by Arizona, or those claiming under it, of any rights already perfected or with the right of Arizona to make additional legal appropriations and to enjoy the same.

Bill dismissed.

MR. JUSTICE MCREYNOLDS is of the opinion that the motions to dismiss should be overruled and the defendants required to answer.

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by the compact, Arizona has not assented to this inclusion of the Gila appropriations in the allotment to the lower basin; and there is no allegation that Wilbur or any of the defendant States are interfering with perfected rights to the waters of that river, which enters the Colorado 286 miles below Black Canyon.